

SENATE RECORD VOTE ANALYSIS

106th Congress
1st Session

Vote No. 33

March 5, 1999, 10:14 a.m.
Page S-2355 Temp. Record

EDUCATION MANDATE WAIVERS/Banking Privacy

SUBJECT: Education Flexibility Partnership Act...S. 280. Allard/Gramm amendment No. 40 to the language proposed to be stricken by the committee substitute amendment No. 31.

ACTION: MOTION TO TABLE FAILED, 0-88

SYNOPSIS: As reported, S. 280, the Education Flexibility Partnership Act, will expand eligibility for participation in the Education Flexibility (Ed-Flex) Program to all 50 States (currently only 12 States are eligible). Under the program, an eligible State may request that the Department of Education give it the right to grant to local education agencies waivers of certain Federal education regulatory and statutory requirements. A State that gives a waiver to a local education agency also must waive its own similar statutory and regulatory education requirements. Certain Federal regulatory and statutory requirements, including requirements relating to health and safety and civil rights, may not be waived. (Federal education funding provides between 6 percent and 7 percent of total public school funding, a third of which is for nutrition rather than education programs. The Federal Government closely controls how the funds it gives are spent, which hampers local innovation. Also, the 4 percent of funding that it gives is responsible for more than 50 percent of the administrative work in many school districts, due to the extensive paperwork requirements that come with Federal assistance.)

The committee substitute amendment would add public notice provisions, strengthen accountability provisions, and make technical corrections as agreed to by the managers.

The Allard/Gramm amendment to the language proposed to be stricken by the committee substitute amendment would prohibit the Federal banking agencies (the Federal Reserve Board, the Office of Thrift Supervision, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation) from implementing their proposed "Know Your Customer" regulations. Under those proposed regulations, every bank and thrift in America would be required to set up typical transaction profiles for each of their customers, to monitor each of their customers transactions, and to notify law enforcement officials any time a customer conducted a transaction that did not fit his or her profile. The rationale for requiring the reporting of unusual transactions is that they

(See other side)

YEAS (0)		NAYS (88)				NOT VOTING (11)	
Republicans (0 or 0%)	Democrats (0 or 0%)	Republicans (46 or 100%)		Democrats (42 or 100%)		Republicans (8)	Democrats (3)
		Abraham	Hatch	Akaka	Kennedy	Bunning- ^{2AN}	Conrad- ²
		Allard	Helms	Baucus	Kerrey	Burns- ^{2AN}	Dorgan- ²
		Ashcroft	Hutchison	Bayh	Kerry	Hutchinson- ^{2AN}	Mikulski- ²
		Bennett	Jeffords	Biden	Kohl	Inhofe- ²	
		Bond	Lott	Bingaman	Landrieu	Kyl- ^{2AN}	
		Brownback	Lugar	Boxer	Lautenberg	McCain- ²	
		Campbell	Mack	Breaux	Leahy	Sessions- ^{2AN}	
		Chafee	McConnell	Bryan	Levin	Thomas- ²	
		Cochran	Murkowski	Byrd	Lieberman		
		Collins	Nickles	Cleland	Lincoln		
		Coverdell	Roberts	Daschle	Moynihan		
		Craig	Roth	Dodd	Murray		
		Crapo	Santorum	Durbin	Reed		
		DeWine	Shelby	Edwards	Reid		
		Domenici	Smith, Bob	Feingold	Robb		
		Enzi	Smith, Gordon	Feinstein	Rockefeller		
		Frist	Snowe	Graham	Sarbanes		
		Gorton	Specter	Harkin	Schumer		
		Gramm	Stevens	Hollings	Torricelli		
		Grams	Thompson	Inouye	Wellstone		
		Grassley	Thurmond	Johnson	Wyden		
		Gregg	Voinovich				
		Hagel	Warner				

VOTING PRESENT (1)

Fitzgerald

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

might be evidence of tax evasion, fraud, or money laundering.

During debate, Senator Gramm moved to table the amendment. A motion to table is not debatable; however, some debate preceded the making of the motion.

NOTE: The amendment was offered after Democratic Senators first objected to allowing a similar amendment to be offered in the Banking Committee, and then objected to a unanimous consent request to allow this amendment to be considered as a freestanding resolution. After offering the amendment, Senator Gramm moved to table it in order to at least put Senators on record as being opposed to the new regulations before they were scheduled to go into effect. After the vote, despite their votes against the motion to table, Democratic Senators were not willing to end debate on the amendment so the Senate could actually vote to ban the proposed regulations. The amendment was subsequently withdrawn.

At the time of the vote, a Bingaman amendment, as amended (see vote No. 31) to the committee substitute amendment remained pending. Also, a Lott second-degree substitute amendment was pending to the Bingaman amendment. The Lott second-degree amendment would increase the authorization for the Individuals with Disabilities Education Act (IDEA) by \$150 million.

No arguments were expressed in favor of the motion to table.

Those opposing the motion to table contended:

We strongly oppose implementation of the proposed "Know Your Customer" regulations because they are unconstitutional, because they would undermine confidence in the banking system if implemented, and because they would impose billions of dollars in compliance costs on banks and thrifts. The first objection is the most serious. The Fourth Amendment to the Constitution states that "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated . . ." The "Know Your Customer" regulations, if implemented, would infringe on this vital constitutional right by allowing the Federal Government to routinely monitor bank accounts, to keep records on where money originated, and to monitor how money was spent, all based on the excuse that it could be evidence that someone was violating the law if his or her bank account practices changed. Under this proposed regulation, the Federal Government could pry into anyone's bank account and send out investigators if that person happened to receive a bonus and put it in the bank. These proposed regulations are intended to fight fraud, tax evasion, and money laundering, but they are so broad-reaching that they would end up infringing on everyone's constitutional rights. Having banks pry into Americans' bank accounts could also undermine confidence in the banking system. It would violate the trust between the bank and the customer, and could thereby lead to widespread withdrawals and lasting damage to our banking system. Even if customers put up with big brother bankers and law enforcement personnel analyzing their transactions, banks would suffer, because the costs of meeting the detailed mandates of the regulations would be enormous. Of course, no Federal funding would be provided for the proposed mandates. The American public vehemently opposes these proposed regulations. Approximately 140,000 people have written to express their opposition, and only 33 misguided souls, perhaps remnant fascists or communist fellow travelers, have written to say what a good idea they think the proposed regulations are. Diverse groups such as the American Civil Liberties Union and the Christian Coalition have come together to oppose these regulations. Some Democrats have been working to stop us from stopping these regulations, first in the Banking Committee and now here on the Senate floor. By offering this amendment, and moving to table it, we will force them to either join us in opposing these horrible proposed regulations or to make public their efforts to stop us. More importantly, we will put the Senate on record as being against these regulations before they are scheduled to be implemented, which may be enough to convince the banking regulators not to put them into effect.

While opposing the motion to table, some Senators expressed the following reservations:

We opposed an earlier proposal on this subject that was offered in the Banking Committee because it was so broadly worded it would have invalidated some existing laws. We objected to considering this particular amendment as a freestanding resolution because we thought we should continue debating the subject at hand before turning to other issues. We oppose tabling this amendment because we agree that the proposed regulations are flawed (though we still do not think we should be considering it on this bill). Finally, we do not believe that there is any need to have a vote at all, because the regulators have indicated that the strong public opposition to their proposal is causing them to rethink it. With that said, we oppose the motion to table.